**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.618 OF 2002**

Maharashtra State Financial
Corporation Ltd. ...Appellant

Vs.

Mrs.Phirosa Bomie Anklesaria ...Respondent

Ms U.M.Jhaveri for the Appellant
Smt.Smita Gaidhani for the Respondent No.1

**CORAM: A.S.OKA, J.**
**DATED: APRIL 11,2005.**

**ORAL JUDGMENT:**

1. Heard Counsel appearing for the parties. The challenge in this Appeal from Order is to the Judgment and Order dated 21st January 2002 passed by the learned Joint Civil Judge (S.D.), Nasik by which the application for temporary injunction made by the Respondent-Plaintiff has been allowed.

2. On 17th December 1993, the Appellant-Corporation sanctioned a term loan of Rs.6.30 lakhs along with Rs.1.42 lakhs under their M.U.M. Scheme to the Respondent against security of land, building, plant and machinery with collateral security in the form of Gala bearing No.B-4, Umiya Apartment, Canada Corner, Nasik. On 2nd May 2000 a notice under Section 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as the said Act of 1951) was issued by the Appellant to the Respondent. The said notice

was issued for taking possession of the secured assets, as the Respondent committed defaults in repayment of amount advanced by the Appellant. After service of notice under the said Act of 1951, the Respondent submitted a proposal to the Appellant for one time settlement. The said proposal was considered by the Appellant and the Appellant agreed to accept the same for Rs.9,50,000/- in full and final settlement of the claim subject to condition that the Respondent No.1 will pay the said amount within a period of three months ending in November 2000. It is the case of the Appellant that a cheque was issued by the Respondent No.1 which was dishonoured. A fresh notice dated 2nd May 2001 under section 29 of the said Act of 1951 was issued by the Appellant to the Respondent calling upon her to pay a sum of Rs.11,84,000/- with further interest thereon failing which the possession of the collateral security will be taken by the Appellant on 28th May 2001.

3. A Civil suit was filed by the Respondent in the Trial Court for declaration that notice issued under Section 29 of the said Act of 1951 dated 2nd May 2001 was illegal, null and void. In the said suit an application for temporary injunction at Exh.5 was made by the Respondent praying for temporary injunction restraining the Appellant-Corporation from taking any further action on the basis of notice dated 2nd May 2001 under Section 29(1) of the said Act of 1951. The said application was opposed by the Appellant by filing a

reply. The Appellant pointed out that the Respondent was a gross defaulter and therefore the Appellant was entitled to exercise its statutory right under the said Act of 1951. By the impugned Judgment and Order the Trial Court restrained the Appellant from taking any action on the strength of notice dated 2nd May 2001.

4. By order dated 4th March 2005 passed on Civil Application No.1135 of 2003 this Court recorded a statement of the Appellant which read thus :

> . "The learned advocate appearing for the Applicant without prejudice to the rights and contentions of the Applicant, states that on 31st August 2000 the respondent No.1 had agreed to pay a sum of Rs.9,50,000/- by way of one time settlement and the same amount was not paid. He states that if the Respondent No.1 pays a sum of Rs.9,50,000/- with reasonable interest thereon from 31st August 2000, the Applicants may consider of accepting the said amount in full and final settlement of their claim. The learned Counsel appearing for the Respondent No.1 stated that on 22nd February 2005 a proposal in writing has been submitted by the Respondent No.1 to the Applicant and in all probability the dispute will be settled."

The reference to the Applicant in the said order is to the Appellant in the Appeal.

5. It appears that the proposal submitted by the Respondent No.1 on 22nd February 2005 was not accepted by the Appellant as the Respondent came out with a suggestion that the total sum of Rs.8,17,000/- without interest should be accepted by

the Appellant in full and final settlement of the claim.

6. An Affidavit has been filed by the Respondent on 5th April 2005. In the said Affidavit it is stated as under :

> . "I say that I am ready and willing to deposit the balance amount of Rs.8,17,000/- (rupees eight lakhs seventeen thousand only) towards the full and final settlement of my dues to the Corporation within a period of four months from the date of order. I am also ready and willing to pay a reasonable rate of interest upto 5% on the said amount as would be directed by this Honourable Court."

7. The learned Counsel for the Appellant submitted that admittedly the Respondent is a defaulter and therefore the Appellant-Corporation had every right to exercise its statutory right under Section 29 of the said Act of 1951. He submitted that it is well settled that scope of the suit to challenge the action under Section 29 is very limited. He pointed out that there were no allegations of malafide in the suit filed by the Respondent and therefore considering the scope of the said suit, order of temporary injunction could not have been granted. He also pointed out that the relief of temporary injunction has been granted unconditionally. The learned Counsel for the Appellant pointed out that the offer of one time settlement given in the year 2000 was for total sum of Rs.9,50,000/- payable in three months in the same year and the Respondent as per her case paid only a sum of Rs.1,33,000/-. He submitted that today the Respondent cannot offer interest only at the rate of 5% p.a.

8. The learned Counsel appearing for the Respondent submitted that the Respondent has repeatedly given offers for one time settlement and today also the Respondent is ready and willing to settle the dispute as stated in the Affidavit dated 5th April 2005. The learned Counsel for the Respondent submitted that the order of temporary injunction passed in the suit of the year 2001 is operating for last more than three years and therefore, no interference can be made at this stage with the said order. The learned Counsel also pointed out various findings recorded by the Trial Court.

9. I have considered the rival submissions. An application was made by the Respondent offering one time settlement which was considered by the Appellant on 31st August 2000. The Appellant agreed to accept the sum of Rs.9,50,000/- in full and final settlement of the claim of the Appellant-Corporation provided the entire amount is paid within three months. Admittedly, the said amount was not paid and even according to the case of the Respondent a sum of Rs.1,33,000/- has been paid by the Respondent to the Appellant. The learned Trial Judge has recorded a finding that though the Respondent agreed to clear the outstanding amount, she has failed to do so. The learned Trial Judge came to the conclusion that prima facie case was made out as the Respondent is disputing the statement of accounts submitted by the Appellant. This is not a case where the

Respondent has come out with a case that dues are cleared by her or that action of the Appellant is malafide. The Respondent failed to avail of the opportunity given to her in the year 2000 by paying a sum of Rs.9,50,000/-. If the amount due and payable by the Respondent was not paid by the Respondent on the date of institution of the suit or thereafter, the learned Trial Judge could not have recorded a finding that a prima facie case has been proved by the Respondent. The Appellant is the statutory Corporation and has been vested with the power under Section 29 of the said Act of 1951. The said power is to be exercised for recovery of public money. Therefore, in my view the impugned Judgment and Order is wholly unsustainable.

10. In the Affidavit dated 5th April 2005 the Respondent has shown readiness and willingness to pay a sum of Rs.8,17,000/- towards full and final settlement of her dues to the Appellant-Corporation within a period of four months from the date of order. She has offered to pay interest only at the rate of 5% on the said amount. Obviously, this Court cannot compel the Appellant to accept the said amount with interest at the rate of 5%. As the order of temporary injunction is operating in favour of the Respondent for last more than three years, if the Respondent deposits a reasonable amount which will secure the claim of the Appellant, protection which was granted by the Trial court to the Respondent can be extended. In August 2000 the Appellant agreed to accept the

sum of Rs.9,50,000/- in full and final settlement of its claim provided the amount was paid within three months. According to the Respondent she has paid 1,33,000/-. Thus, even today a sum of Rs.8,17,000/- out of the said amount of Rs.9,50,000/- is due and payable by the Respondent. The Appellant cannot be prevented from exercising its statutory power under Section 29(1) unless a substantial amount is deposited by the Respondent. If the Respondent wants protection at this stage from action under Section 29 (1) of the said Act of 1951, in my view the Respondent will have to deposit a lumpsum amount of Rs.10 lakhs with the Appellant. Though I am inclined to set aside the order of injunction, if the Respondent deposits the said amount of Rs.10 lakhs in four equal monthly instalments of Rs.2,50,000/-, protection granted by the trial Court in favour of the Respondent will continue to operate.

11. Hence I pass the following order :

i) If the Respondent deposits with the Appellant a sum of Rs.10 lakhs within a period of four months from today in equal monthly instalments of Rs.2,50,000/-, the impugned Judgment and Order will continue to operate till the final disposal of the suit.

ii) The first instalment of Rs.2,50,000/- shall be payable on or before 10th May 2005 and the three further instalments

shall be payable on or before 10th June 2005, 10th July 2005 and 10th August 2005 respectively. In the event the Respondent commits any default, the impugned Judgment and Order will stand set aside.

iii) The amounts shall be paid by the Respondent to the Appellant-Corporation. In case the Appellant-Corporation receives any amount for and on behalf of the Respondent from Western Maharashtra Development Corporation by way of subsidy, the said amount shall be adjusted by the Appellant at the time of final accounts.

iv) Hearing of the Special Civil suit No.164 of 2001 is expedited. The said suit shall be disposed of by the learned Trial Judge on or before 31st December 2005.

. Parties and the concerned Court to act upon an authenticated copy of this order.

**Judge.**